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Plaintiffs' Interim Co-Lead Class Counsel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE PLUM BABY FOOD LITIGATION

) Case No. 21-cv-00913-YGR

This document relates to:

All Actions

) **JOINT STATEMENT REGARDING CASE
MANAGEMENT**

The parties to the above-entitled action submit this joint statement regarding case management.

I. PLAINTIFFS' STATEMENT

1. The above-captioned matter was consolidated before this Court on March 9, 2021. (Dkt. 14.) An Initial Case Management Conference was held before this Court on April 26, 2021. (Dkt. 58.)

2. On July 30, 2021, this Court entered an Order denying Defendants' motion to transfer this consolidated action to the District of New Jersey. (Dkt. 79 at 7-8.) The Court further

**JOINT STATEMENT REGARDING CASE MANAGEMENT
CASE NO. 21-cv-00913-YGR**

1 granted the motion for appointment of undersigned counsel as Interim Co-Lead Counsel “for
2 plaintiffs and other members of the proposed classes in the Consolidated Action.” (*Id.* at 8.)

3 3. On August 6, 2021, the Court entered an Order setting deadlines for the filing of
4 an amended complaint, response/motion to dismiss, and opposition to motion to dismiss. (Dkt.
5 82.) Plaintiffs filed their First Amended Consolidated Complaint in accordance with that Order
6 on September 3, 2021. (Dkt. 98.)

7 4. In light of the consolidation of this matter, the appointment of lead counsel, and
8 the filing of the First Amended Consolidated Complaint, a second case management conference
9 is necessary to expedite the efficient and speedy litigation of this matter, including by setting
10 deadlines for initial disclosures and putting a discovery plan in place in accordance with Fed. R.
11 Civ. P. 16(c).

12 5. Plaintiffs therefore request a Case Management Conference on or about October
13 4, 2021. Plaintiffs will work with Defendants to prepare and submit a joint case management
14 statement save days in advance thereof, in accordance with Paragraph 6 of this Court’s Standing
15 Order in Civil Cases and the Standing Order for All Judges of the Northern District of California
16 re: Contents of Joint Case Management Statement.

17 **II. DEFENDANT’S STATEMENT**

18 1. Defendant Plum, PBC agrees that there will be a need for case management and
19 scheduling, but that any Rule 16 scheduling conference and scheduling order is premature until
20 pleadings and location of all of the related Plum cases have been resolved so that there can be
21 universal coordination of discovery and dispositive motions. The status of the pending Plum
22 matters is as follows:

- 23 a. *In re Plum Baby Food Litig.*, No. 21-cv-00913-YGR (N.D. Cal.) – Response to
24 the first amended consolidated complaint is due by October 18, 2021, and Plum
25 anticipates moving to dismiss the amended complaint in its entirety, including
26 seeking to dismiss or stay on primary jurisdiction grounds.

b. *In re Plum Baby Food Litig.*, No. 21-cv-2417-NLH-KMW (D.N.J.) – This action is a consolidation of five parallel consumer class actions against Plum, PBC and Campbell Soup Company in New Jersey. Currently pending in the action is a motion for interim lead counsel. ECF 57. Once appointed, interim lead counsel will file a consolidated amended complaint and defendants will have 45 days to respond to the consolidated amended complaint. ECF 45. Plum and Campbell Soup Company likewise intend to file a motion to dismiss the D. N.J. consolidated complaint, including seeking to dismiss or stay on primary jurisdiction grounds.

c. *L. Smith, et al. v. Plum, PBC, et al.*, No. 21-cv-2519-YGR (N.D. Cal.) – This multi-defendant consumer class action alleging a RICO claim and, separately, non-RICO claims was dismissed just today. On August 26, 2021, the same firm (Sharp Law) filed a RICO-only action in Oregon (*Gavula, et al. v. Campbell Soup Company, et al.*, No. 21-cv-1275-IM (D. Or.)), further demonstrating that the relevant actions, parties and claims are fluid.

2. Given defendants' anticipated motions to dismiss in the N.D. Cal. and D. N.J. consolidated cases, the pleadings are not yet settled. Defendants' anticipated motions could significantly impact the scope of the issues in the consolidated cases, including whether they proceed at this time at all or whether the courts defer to the primary jurisdiction of FDA, which is currently undertaking a review and considering rule making, pursuant to its regulatory authority, regarding heavy metals in baby food, which is expected to result in specific science-based regulations and guidance.

3. It would be inefficient and potentially lead to inconsistent rulings for the parallel consolidated cases to proceed on two different tracks or for the parties to engage in duplicative and overlapping discovery (which should be identical) and dispositive motions. Accordingly, once the pleadings are settled in both the N.D. Cal and D. N.J. consolidated cases, Plum requests

1 that a case management conference be set to address how both cases and the discovery between
2 them can be coordinated so that Lead Counsel for plaintiffs in both N.D. Cal and D. N.J. are
3 working on similar, non-duplicative and non-conflicting schedules.

4 Dated: September 10, 2021

5 **LOCKRIDGE GRINDAL NAUEN P.L.L.P.**

6 By: s/ Rebecca A. Peterson

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1 Dated: September 10, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses registered, as denoted on the Electronic Mail Notice List generated by the CM/ECF system.

s/ Rebecca A. Peterson
REBECCA A. PETERSON